THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

W.P.No.18806 of 1995

ORDER:

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This writ petition is filed by the petitioner seeking to declare that the letter dated 28-06-1994 issued by the first respondent as illegal and arbitrary and consequently to issue a direction to restore the petitioner's Middle Management Grade Scale-II with all consequential and attendant benefits.

2. The averments made in the affidavit filed in support of the petition are briefly as follows:-

The petitioner was appointed as a Cashier in the State Bank of India on 08-06-1966. He was promoted to the officer cadre with effect from 31-12-1979. He was further promoted

to the officer MMG Scale-II with effect from 01-11-1992.

On 06-01-1993, the General Manager and disciplinary authority, who is the second respondent herein, through the letter dated 05-12-1992 served a charge sheet on him. The imputation of charges relate to recommendation for sanction of gold loan of Rs.2,500/- on 13-04-1987 for a short period during which he officiated as a Chief Cashier at Sattenapalli Branch, Guntur. He had failed to properly ascertain the genuineness of the gold. He was directed to submit a written statement within 7 days. He submitted an explanation on 12-01-1993 contending *inter alia* that before the ornaments were accepted for pledge, they were subjected to touchstone and acid test and the person who obtained the loan was longstanding, trustworthy and honest depositor of the bank and that he had exercised usual care required under the State Bank of India (Supervising Staff) Service Rules (for short 'the Rules') for accepting the ornaments. The second respondent by letter dated 12-10-2993 carefully considered the matter and decided to take a lenient view in the matter and imposed the punishment of censure as provided under Rule 49 (a) of the Rules. As he was imposed a minor penalty of censure, he did not thought that it is a matter to be appealed and the censure would be operated only for the calendar year ending on 31-12-1993, but to his surprise he received on 20-07-1994 a letter dated 28-06-1994 issued by the Chief General Manager stating that in view of the punishment of

censure imposed upon him by letter dated 12-10-1993, his promotion to MMG Scale-II with effect from 01-11-1992 had been rescinded. He was promoted to Middle Management Grade-II Scale with effect from 01-11-1992 prior to initiation of the disciplinary proceedings and imposed a penalty of censure, hence the same cannot have any effect upon his earlier promotion. The action of the respondents is, therefore, amounts to imposing a further penalty of cancellation of promotion in respect of the earlier charge.

3. The respondents filed a counter affidavit with the following averments in brief:-

The respondents have not violated any statutory provisions. A charge sheet was issued to the petitioner on
05-12-1992 for the irregularities committed by him in sanctioning the loans against pledge of gold ornaments. In the meantime, the exercise relating to the promotion of MMG
Scale-II was initiated. By an office order dated 02-01-1993, the petitioner was promoted to MMG Scale-II. It was not brought to the notice of the department that the disciplinary proceedings were pending against the petitioner on the date when his case was considered for promotion to the next higher post. There is a sealed cover procedure in the department and it would be applicable to the promotion of the petitioner. After completion of the disciplinary proceedings, if any delinquent official is exonerated of the charges, such of those officers would be given promotion with retrospective date and such official would have been promoted, but for the pending of the disciplinary proceedings. The disciplinary proceedings against the petitioner ended in imposition of penalty through the proceedings
dated 12-10-1993, therefore, the petitioner is not entitled
to the promotion as per the policy of the bank. By oversight and mistake, the petitioner was promoted to MMG Scale-II, but he was not served with the letter of promotion as the error had came to light immediately thereafter. The pay of the officer, who has been promoted, has to be revised basing on the letter of promotion served on him. In the instant case, no such letter had been served on the petitioner. But erroneously, the authority concerned has revised the pay scale of the petitioner and as such wrongful payment was made to the petitioner. By the date of promotion, the disciplinary proceedings were pending against him. It is settled law that during the currency of the disciplinary proceedings, the delinquent official is only entitled to

be considered for promotion and the result would be kept in sealed cover. The writ petition is, therefore, liable to be dismissed.

4. The respondents filed an additional counter affidavit reiterating the sealed cover procedure and the disentitlement of the petitioner to the promotion during the pendency of the disciplinary proceedings.

5. The petitioner filed an additional affidavit mentioning that he was promoted to MMG Scale-II with effect from
01-11-1992. His promotion to MMG Scale-II was rescinded by the letter dated 28-06-1994 in view of the punishment of censure imposed on him by letter dated 12-10-1993. The Hon'ble Court granted interim stay on 01-03-1996 of the impugned proceedings. As of now, he is continuing in MMG Scale-II. He further submitted that even after the period of censure was completed, he was only called for MMG Scale-II examinations. However, he did not appear for the said examination as he was already getting MMG Scale-II. He was not called for promotion to the next higher cadre. The persons who are selected and promoted as MMG Scale-V and juniors to him were also promoted to further higher grades and became seniors to him.

6. The averments made by the petitioner and the respondents indicate that the petitioner was promoted during the pendency of the disciplinary action, therefore it is liable to be rescinded.

7. The petitioner contended that he was promoted to MMG Scale-II with effect from 01-11-1992 and the disciplinary action was initiated against him subsequently, therefore, his promotion is not liable to be rescinded through the proceedings dated 28-06-1994. Therefore, the question to be considered is whether the rescinding order dated 28-06-1994 passed by the first respondent rescinding the promotion of the petitioner is illegal, arbitrary and is liable to be set aside.

8. It is undisputed fact that the petitioner was appointed on 08-06-1966 and was promoted as an Officer with effect
from 31-12-1979. He was further promoted with effect from
01-11-1992. The charge memo was issued by the second respondent on 05-12-1992 and it was received by the petitioner on 06-01-1993. The petitioner submitted his explanation on
12-01-1993. On 12-10-1993, the first respondent issued a letter to the petitioner regarding the rescinding of his promotion

to MMG Scale-II and the petitioner received the same on
20-07-1994. The notice dated 05-12-1992 discloses the allegations made against the petitioner and requiring him to submit his explanation. The letter dated 12-10-1993 discloses that the second respondent enclosed a copy of the proceedings imposing a penalty of censure as provided under the Rules. This order was passed on merits after considering the previous conduct of the petitioner. On 28-06-1994, he received a letter with the following effect:

> "With reference to our Circular Letter (PER) (P&C) 1 dated the 9th January 1993 declaring the promotion to Middle Management Grade Scale-II with effect from 1.11.1992 (Normal Channel) of the officials named therein including that of yours, we regret to inform you that in view of the punishment of 'Censure' imposed upon you vide our letter No.(DPD) (LHO) 517 dated the 12th October 1993, your promotion to MMG Scale-II with effect from 1.11.1992 has been rescinded.
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> 2. Please acknowledge receipt of this letter."

9. When questioned during the course of arguments as to when the initiation of the disciplinary action started, the respondents could not give any reply. Whenever any officer is due for promotion, if there is any punishment in currency, such promotion has to be differed till the period of punishment is over. The punishment of censure in this case ended by the end of the calendar year 1992 and therefore, the petitioner is eligible for promotion from 01-01-1993. Admittedly, the disciplinary action was initiated against the petitioner with effect from
05-12-1992 and as the disciplinary action culminated in imposing the punishment of censure, the officers were made to pass the said order rescinding his promotion with effect from
01-11-1992. Preparation of the panel and the selection of candidates was admittedly done prior to the initiation of the disciplinary proceedings. There is no disqualification as on the date of giving promotion, therefore, the promotion was done in the ordinary course without being influenced by the imposition of punishment of censure. But subsequently, the disciplinary authority imposed the punishment of censure unmindful of the consequences of denial of promotion to the petitioner. The petitioner was continued in service in MMG Scale-II from the beginning by virtue of an interim order passed by this Court.

It is an established proposition that when once promotion is given by following the due process, it cannot be rescinded either by way of demotion or punishment. It is not the case of either of the parties that the officer was demoted for want of vacancy or any punishment was imposed by 01-11-1992. The explanation given by the respondents regarding the rescinding of the order is not convincing, it is therefore liable to be set aside.

10. In the result, the writ petition is allowed.

The impugned order dated 28-06-1994 rescinding the promotion of the petitioner to MMG Grade-II scale is illegal and arbitrary and is therefore set aside. The petitioner is entitled to the promotion with effect from 01-11-1993 with all consequential benefits including the promotion, if any, in the normal course of circumstances. No costs.

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Dr.G.YETHIRAJULU, J

Date: 08-02-2006

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